

JUL 17 1997

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket 97-1  
[REDACTED]

In the Matter of	)	
	)	
Public Notice Establishing Pleading	)	CCB/CPD 97-30
Cycle for Comments on Request by ALTS	)	DA 97-1399
for Clarification of the Commission's	)	
Rules Regarding Reciprocal Compensation	)	
for Information Service Provider	)	
Traffic	)	

COMMENTS OF THE NEW YORK STATE  
DEPARTMENT OF PUBLIC SERVICE

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Commission's request for comment on the Association for Local Telecommunications Services ("ALTS") request for expedited clarification of the Commission's rules regarding the rights of a competitive local exchange provider ("CLEC") to receive reciprocal compensation for traffic delivered to information service providers ("ISPs") pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"). Specifically, ALTS requests clarification that nothing in the Act or the Local Competition Order<sup>1</sup> ("the Order") requires traffic to ISPs to be treated differently from other local traffic under current reciprocal compensation agreements when local calls to ISPs are exchanged between incumbent local exchange

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<sup>1</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), *stayed in part pending judicial review sub nom. Iowa Utils. Bd. v. FCC*, 109 F.3rd 418 (8th Cir. 1996).

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carriers ("ILECs") and CLECs. The Commission requests comment with regard to both ISPs, and more specifically, enhanced service providers ("ESPs").

The NYDPS agrees with ALTS' assessment that neither the Act nor the Order changed the long-standing rules regarding reciprocal compensation for the exchange of local traffic. ALTS relies upon the Commission's recognition that calls to ISPs within local calling areas are treated as local calls for the purpose of end user tariffs, separations, and interconnection agreements among ILECs.<sup>2</sup>

According to ALTS, the issue relates to local calls to ISPs,<sup>3</sup> within a local calling area, regardless of whether the ISP reformats or retransmits information. In fact, ALTS refutes claims that local calls to ISPs are overwhelmingly interexchange, and not local.<sup>4</sup> ALTS further relies on the Commission determination under section 251(b)(5) that state commissions have the authority to determine what geographic areas should be considered local areas consistent with the state commissions' historical practice of defining local service areas for wireline LECs.<sup>5</sup> However, pursuant to section 152(b) of the Communications Act,<sup>6</sup> we respectfully disagree with ALTS' assessment that the Commission

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<sup>2</sup> See ALTS Letter, pp. 1-3.

<sup>3</sup> The text of ALTS' questions for clarification further illumine that the nature of the traffic is local.

<sup>4</sup> See ALTS letter, p. 4, where ALTS argues that such arguments have two fatal flaws.

<sup>5</sup> Order, para. 1034-1035.

<sup>6</sup> 47 U.S.C. §152(b).

has exclusive jurisdiction over these local matters.<sup>7</sup> While the NYDPS believes that states have long-standing jurisdictional authority over local telecommunications traffic,<sup>8</sup> we have not prejudged the underlying issues. Rather, in response to issues raised by an ILEC petition and complaints from individual CLECs who exchange traffic with another ILEC under reciprocal compensation arrangements, New York has initiated a proceeding to expeditiously investigate reciprocal compensation related to internet traffic.<sup>9</sup> We will investigate, in part, if there are special characteristics or unique costs associated with originating and terminating local internet traffic, network congestion peculiar to internet, and if there is a basis for treating local internet calls differently from other local calls.

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<sup>7</sup> ALTS' reliance on Computer II and CCIA (Computer II, 77 F.C.C.2d 384 (1980); Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C.) Cir. 1982), cert. denied, 461 U.S. 938 (1983)) is misplaced. There the issue was the Commission's authority to deregulate and preempt state tariffing of customer premises equipment and enhanced services. Here, ALTS suggests that the Commission should exercise exclusive jurisdiction over local traffic, merely because such traffic is carried to an enhanced service provider.

<sup>8</sup> Indeed, an ILEC and several CLECs properly have sought our review of such matters.

<sup>9</sup> Case 97-C-1275, Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic (Issued and Effective July 17, 1997).

In conclusion, we respectfully request that the Commission refrain from asserting jurisdiction over this matter of local telecommunications traffic and not impede states' efforts to deal expeditiously with the underlying issues.

Respectfully submitted,

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Dated: July 17, 1997